

## **REMARKS**

Entry of the foregoing amendments is respectfully requested.

### **Summary of Amendments**

Upon entry of the foregoing amendments claim 102 is cancelled and claim 145 is added, whereby 82-101 and 103-145 will be pending, with claims 82, 126 and 145 being independent claims.

New claim 145 corresponds generally to cancelled claim 102 which is rewritten in independent form.

Applicants note that entry of the present amendments is proper since they do not raise any new issues and do not require any further search.

### **Summary of Office Action**

Claims 82-144 are provisionally rejected under on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 19-77 of copending Application No. 10/759,160.

Claims 82-101 and 103-125 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Riedel et al., U.S. Patent No. 6,558,680 (hereafter “RIEDEL”) in view of Chapin et al., U.S. Patent No. 4,370,319 (hereafter “CHAPIN”).

**Response to Office Action**

Reconsideration and withdrawal of the rejections of record are respectfully requested in view of the foregoing amendments and the following remarks.

***Response to Provisional Rejection of Claims***

Claims 82-144 are provisionally rejected under on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 19-77 of copending Application No. 10/759,160.

In order to advance prosecution of the present application to allowance Applicants herewith submit an executed Terminal Disclaimer with respect to copending Application No. 10/759,160, thereby rendering this rejection moot.

As noted above, Applicants submit an executed Terminal Disclaimer to advance prosecution of the application to allowance. This Terminal Disclaimer is being presented without expressing agreement or acquiescence with the rejection of record, and merely is being filed to place the application in condition for allowance.

Authorization is hereby provided to charge any fee necessary for consideration or entry of the Terminal Disclaimer to Deposit Account No. 19-0089.

***Response to Rejection of Claims under 35 U.S.C. § 103(a)***

Claims 82-101 and 103-125 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over RIEDEL in view of CHAPIN for the reasons of record as set forth in the previous Office Action dated July 20, 2007 at pages 4-6. Accordingly, the rejection is primarily based on the composition of Example 1 of RIEDEL and a passage in col. 11, lines 14-24 of RIEDEL wherein it is

stated that the compositions disclosed therein may optionally contain cosmetic active ingredients such as, *inter alia*, polymers. Regarding the independent claims submitted in response to the previous Office Action, the Examiner apparently takes the position that the recitation therein that the claimed compositions are pearlescent is only a “recitation of intended use and does not further limit a claim drawn to a composition”. Further, regarding the recitation of specific polymers, i.e., an amphiphilic polymer, an associative polymer and/or a siloxane elastomer, in the present claims in comparison to the mere mentioning of “polymers” as one of many types of optional components in the compositions of RIEDEL, the rejection asserts that “one skilled in the art would have assumed the substitution of one known element (a polymer) for another would have yielded predictable results at the time of the invention.”

Applicants respectfully traverse this rejection. In particular, it is pointed out that contrary to what is alleged in the present Office Action, the recitation of “pearlescent” in the present independent claims is not merely the recitation of an intended use but is the recitation of a property of the claimed compositions. In other words, regardless of what the intended use of the claimed compositions may be, the claimed compositions will invariably be pearlescent.

RIEDEL and CHAPIN do not appear to mention pearlescent compositions, let alone teach how pearlescent compositions (and in particular, pearlescent compositions which show good skin compatibility) can be obtained. For this reason alone, the cited documents are unable to render obvious the claimed compositions.

Applicants again emphasize that the mere fact that RIEDEL mentions “polymers” as one of many examples of optional ingredients, auxiliaries and additives which find use in cosmetic compositions clearly does not amount to a motivation for one of ordinary skill in the art to add specific classes of polymers which are not conventionally employed in cosmetic or dermatological

compositions, i.e., amphiphilic polymers, associatives polymers and/or siloxane elastomers to the composition of Example 1 (or any other composition) of RIEDEL.

It is submitted that the term “polymers” encompasses hundreds, if not thousands, of different types of polymeric substances. If one were to adopt, *arguendo*, the position taken by the Examiner, adding any member of this huge group of polymeric substances to the composition of Example 1 of RIEDEL would be obvious to one of ordinary skill in the art for the sole reason that RIEDEL mentions in passing and without providing any details regarding types, concentrations, etc., that “polymers” may optionally be present in the compositions disclosed therein.

In this regard, it needs to be taken into account that the three specific types of polymers which are recited in the present claims, i.e., amphiphilic polymers, associative polymers and siloxane elastomers do not represent polymers which are conventionally and routinely employed in cosmetic or dermatological compositions (e.g., as thickeners or rheology modifiers). Applicants point out that the Examiner has not cited a single document which discloses the incorporation an amphiphilic polymer, an associative polymer and/or a siloxane elastomer into a cosmetic composition of a type which is similar to the type of composition which is recited in the present claims (regardless of whether the composition is pearlescent or non-pearlescent).

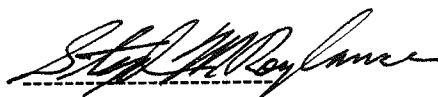
Applicants also still fail to see where in the cited documents the use of a solubilizer and in particular, the solubilizer recited in, e.g., present claim 119 is taught or suggested, and neither does the present Office Action contain any comment in this regard.

It is submitted that for at least all of the foregoing reasons, the rejection of claims 82-101 and 103-144 under 35 U.S.C. § 103(a) over RIEDEL in view of CHAPIN is without merit, wherefore withdrawal thereof is again respectfully requested.

**CONCLUSION**

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,  
Silke KOHLHASE et al.

A handwritten signature in dark ink, appearing to read "Neil F. Greenblum", written over a horizontal dashed line.

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